

A G. Contract No KR99 0174TRN
ADOT ECS File: JPA 99-16
Project: HF009 01C
Section: Tilbury Drive
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF KEARNY, ARIZONA

THIS AGREEMENT is entered into 7 April, 1999,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the
STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State")
and the TOWN of KEARNY acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The State has approved the exchange of \$211,500.00 in Highway User Revenue Funds (HURF) to the Town for construction of improvements to Tilbury Drive in the Town, and such funds will be repaid to the State by withholding from the Central Arizona Association of Governments (CAAG) federal funds and the obligation authority for federal funds in the amount of \$269,577.00 in federal fiscal year 2000.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 23126
Filed with the Secretary of State
Date Filed: 04/07/99
Betsy Bayless
Secretary of State

Dick V. Greenwood
B. Dick V. Greenwood

II. SCOPE OF WORK

1 The Town will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project cost at the start of construction.

d. Invoice the State for thirty percent of the project cost at the thirty percent and sixty percent project completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance.

f. Invoice the State for ten percent of the project cost at the one hundred percent project completion stage after final project review is completed by CAAG representatives and State ADOT representatives.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, advance the Town HURF funds in the amount of \$211,500.00 in accordance with paragraph II.1.c., d. and f. above

b. Withhold from CAAG, federal funds and the obligation authority of federal funds in the amount of \$269,577.00.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2 This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3 This agreement shall become effective upon filing with the Secretary of State.

4 This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5 The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Kearny
Town Manager
Box 639
Kearny, AZ 85237

8 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


TOWN OF KEARNY, ARIZONA

STATE OF ARIZONA
Department of Transportation

By 
WANDA F. DALTON, Mayor

By 
DALE BUSKIRK, Director
Transportation Planning

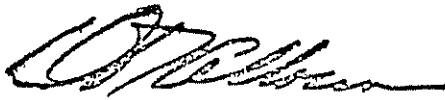
ATTEST

By 
MARGARET GASTON
Town Clerk

RESOLUTION

BE IT RESOLVED on this 26th day of January 1999, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Kearny for the purpose of defining responsibilities for the exchange of HURF funds.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Director of Transportation Planning for approval and execution.

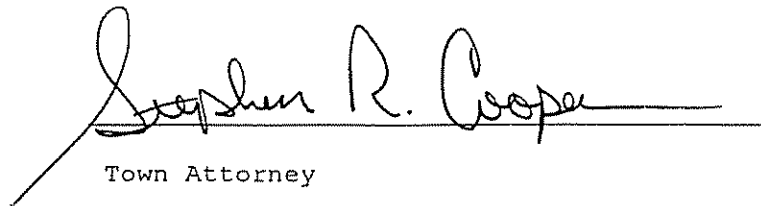
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DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

APPROVAL OF THE KEARNY TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF KEARNY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 15th day of March, 1999.


Town Attorney

RESOLUTION NO. 99-443

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY,
ARIZONA AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF ARIZONA TO IMPLEMENT A HURF EXCHANGE PROGRAM FOR TILBURY
DRIVE CONSTRUCTION

WHEREAS, The Town of Kearny is empowered by Arizona Revised Statutes to enter into an
intergovernmental agreement, and

WHEREAS, The Arizona Department of Transportation has established the HURF Exchange
Program to finance road improvement. and

WHEREAS, the Town of Kearny plans a street improvement project on Tilbury Drive.

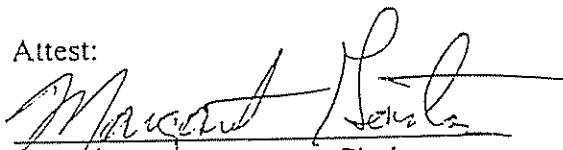
NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL, OF
THE TOWN OF KEARNY, ARIZONA:


1. The Mayor and Town Manager acting on behalf of the Town of Kearny are hereby
authorized to negotiate, enter into, execute and deliver the intergovernmental agreement with the
Arizona Department of Transportation implementing the HURF Exchange Program for the Tilbury
Drive project.

2. This resolution shall take effect immediately upon its adoption and approval

ADOPTED AND APPROVED this 8nd day of March, 1999

Attest:


Margaret Gaston, Town Clerk


Wanda Dalton, Mayor

Approved As To Form:


Steve Cooper, Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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JANET NAPOLITANO
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR99-0174TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED March 30, 1999.

JANET NAPOLITANO
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/19818

Enc.